O. Rationing.

1944 **File No.** /44

A **BRANCH**

Subject:—

Opinions Under the Bombay Rationing Order 1943

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C O N T E N T S.

Legal Department File No. C. Rationing/44.

Sr. No.	Compilation No.	Subject	Pages.
		Opinions under the Sugar Rationing Order 1943.	
1.	C. No. 1194/14-2-44	Re: The sugar whether sugar when mixed with tea for preparing beverages is an article of merchandise and a rationed article clause 4 of application of -	1-2
2.	C. No. 4028/6-6-44.	clause 6 A (3) Prosecution for dropping ration on the card of a deceased person	3-4
3.	C. No. 7076/11-10-44.	Sub-clause (2) of cl. 3 and sub-clause (2) of cl. 9 whether it wanted would now be lawful to cancel the authorization under the for-the selling certain article which is not a rationed article, for a price above the controlled rate.	5-6
4.	C. No. 8940/89-12-44	Question regarding cancellation of authorization and forfeiture of deposite for selling rice at higher rate.	7-8

SSA / 10/7/56.

PHB 24/7

MGB 24/7

Office of the R.L.A.

It is true that sugar is a rationed article ~~long~~ so long as it is an article of merchandise; but as soon as it is mixed with tea for preparing a beverage, it ceases to be an article of merchandise and a rationed article. Consequently clause 4 of the Bombay Rationing Order will it seem have no application to sugar used by an establishment in preparing tea for service to its customers.

Id /14/2

Remembrance of Legal Affairs.

U.O.No. to F.D. (Supply). No. 1194, dated the 14th February 1944.

Office of the R.L.A.

In the present case Shiku can be prosecuted for breach of clause 6A(3) of the Bombay Rationing Regulation, 1943, for his failure as head of the family to surrender the ration card of the deceased Shimbai wit in ten days from the date of her death ; and Janabhai who unlawfully drew the ration on the ration card of the deceased Shimabai can be prosecuted for breach of clause 9 read with clause 13(b)(i) of the Bombay Rationing Order.

2. R.L.A. does not desire on the facts of this case to express any opinion on the general question of liability for the ration drawn illegally by a servant at the instance or connivance of without the knowledge of his master. Each case must be decided on its particular facts. The present case is not one of master and servant.

Id/-
R.R.... 5/6/44.
Remembrancer of Legal Affairs.

U.R. ton Controller of Rationing, No. 4028, dated the 6th June 1944.

SSH / 10/7/56.

Office of the A.L.A.

"Penal statutes are to be fairly construed and faithfully applied according to the intent of the Legislature without unwarrantable severity on the onehand or unjustifiable levity on the other, in cases of doubt the Courts inclining to mercy". (See Craies p. 455). Sub-clause (2) of clause 3 and sub-clause (2) of clause 9 of the Bombay Rationing Order, 1943, are in the nature of penal provisions. The intent of the Legislature in making the said provisions as indicated by the opening words of clauses 3(1) and 9(1), "with a view to controlling the distribution of any rationed article" appears to be to provide for power to penalise the breach of any regulation or rule relating to the control of rationed articles. Tomco hair oil is not a rationed article within the meaning of clause 2(7) of the Order. Consequently it does not appear lawful in the present case to cancel the authorizations under sub-clause (2) of clause 3 and sub-clause (2) of clause 9 of the Order for selling Tomco hair oil for a price above the controlled rate. (Cf. R.L.A's opinion No. 5992, dated 29-8-1944).

Id/-
P.N.M.
9/10/44.
Remembrancer of Legal Affairs.

Id/-
9/10/44

U.R. to F.D. (Supply), No. 7076, dated the 11th Oct., 1944.

Office of the R.L.A.

In this case the authorisation of Mr. Khimji Virji has been cancelled and his deposit has been forfeited. The order of cancellation and foreiture is at page 55 and the offence is stated there to be of selling 4 paylees of rice at a rate higher than the controlled rate without the authority of a ration document. Mr. Khimji Virji's servants or agents were prosecuted for this offence and were discharged. In the circumstances it is advisable to return the deposit.

2. The second question is regarding cancellation of the authorisation. Since the Magistrate's Order is an Order of discharge, there is no finding of fact and it cannot be said from that order that any facts have been proved or disproved. The only thing that is clear is that the Magistrate thought that the evidence was quite insufficient to establish the prosecution case. It seems however from the evidence of the hostile Panch witness that 4 paylees of rice were taken from the shop without the production of a ration card. Speaking generally, discharge or acquittal would not necessarily compel Government to restore the authorisation. The trial while not proving a penal offence might establish sufficient facts to justify Government's cancelling the authorisation. Further there may be other charges against Mr. Virjee which it is open to Government to consider even after acquittal or discharge. In the present case, it would however be inadvisable to again maintain the cancellation on the ground stated in the Order at page 55. Finance Department (Supply) may consider carefully the case against Mr. Khimji Virjee and see whether they are satisfied that he is an

he is an undesirable distributor. if they are , then, th rc ou ht to be a fr o' order giving reasons for maintaining t"e cancellation.

Id/- .
P.N.H.
19/12/1944.

Rememorancer of Legal Affairs.

U.R. to F.D. (Supply) No. 8940, Dated the 18th December 1944.